

109TH CONGRESS
1ST SESSION

H. R. 755

To provide for the external regulation of nuclear safety and occupational safety and health responsibilities at any nonmilitary energy laboratory owned or operated by the Department of Energy.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2005

Mr. COSTELLO (for himself, Mr. CALVERT, Mr. LIPINSKI, Mr. EHLERS, Ms. JACKSON-LEE of Texas, Ms. WOOLSEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. WU, and Mr. McNULTY) introduced the following bill; which was referred to the Committee on Science, and in addition to the Committees on Energy and Commerce and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the external regulation of nuclear safety and occupational safety and health responsibilities at any nonmilitary energy laboratory owned or operated by the Department of Energy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXTERNAL REGULATION OF DEPARTMENT.**

4 (a) **ELIMINATION OF DEPARTMENT AUTHORITY.—**

5 Effective 2 years after the date of enactment of this Act,

1 the Department shall have no regulatory or enforcement
2 authority with respect to nuclear safety and occupational
3 safety and health responsibilities assumed by the Nuclear
4 Regulatory Commission under subsection (b) or by the Oc-
5 cupational Safety and Health Administration under sub-
6 section (c) at any nonmilitary energy laboratory owned or
7 operated by the Department.

8 (b) NUCLEAR REGULATORY COMMISSION AUTHOR-
9 ITY.—

10 (1) NUCLEAR SAFETY REGULATORY AND EN-
11 FORCEMENT RESPONSIBILITIES.—Effective 2 years
12 after the date of enactment of this Act, the Nuclear
13 Regulatory Commission shall assume the nuclear
14 safety regulatory and enforcement responsibilities of
15 the Department under the Atomic Energy Act of
16 1954 with regard to nonmilitary energy laboratories
17 owned or operated by the Department.

18 (2) LICENSED ENTITIES.—For the purposes of
19 carrying out at nonmilitary energy laboratories
20 owned or operated by the Department regulatory
21 and enforcement responsibilities described in para-
22 graph (1), the Nuclear Regulatory Commission may
23 regulate, through licensing, certification, or other
24 appropriate means, the Department’s contractors.

1 (3) DECOMMISSIONING.—A contractor oper-
2 ating a nonmilitary energy laboratory owned by the
3 Department shall not be responsible for the costs of
4 decommissioning that facility. No enforcement action
5 may be taken against such contractor for any viola-
6 tion of Nuclear Regulatory Commission decommis-
7 sioning requirements, if such violation is the result
8 of a failure of the Department to authorize or fund
9 decommissioning activities. The Nuclear Regulatory
10 Commission and the Department shall, not later
11 than 1 year after the date of enactment of this Act,
12 enter into a memorandum of understanding estab-
13 lishing decommissioning procedures and require-
14 ments for nonmilitary energy laboratories owned or
15 operated by the Department.

16 (4) ACCELERATORS.—Notwithstanding the pro-
17 visions of the Atomic Energy Act of 1954 (42
18 U.S.C. 2011 et. seq.), effective 2 years after the
19 date of enactment of this Act, the Nuclear Regu-
20 latory Commission shall have exclusive regulatory
21 authority over accelerators, other electronic sources
22 of radiation not assigned to the Commission as of
23 the date of enactment of this Act, accelerator-pro-
24 duced radioisotopes, and naturally occurring radio-
25 active materials at nonmilitary energy laboratories,

1 consistent with the authorities granted the Nuclear
2 Regulatory Commission in the Atomic Energy Act of
3 1954. Until such time as the Commission has com-
4 pleted a rulemaking for the foregoing equipment and
5 radioisotopes, nonmilitary energy laboratories shall
6 be required to meet the requirements stipulated in a
7 license for the facility.

8 (5) ADMINISTRATION.—The responsibilities as-
9 sumed by the Nuclear Regulatory Commission under
10 this subsection shall be administered by the Nuclear
11 Regulatory Commission, not by States.

12 (6) JUDICIAL REVIEW.—Section 189 b. of the
13 Atomic Energy Act of 1954 (42 U.S.C. 2239(b)) is
14 amended by adding the following paragraph after
15 paragraph (4):

16 “(5) Any final order or regulation of the Com-
17 mission establishing standards to govern nonmilitary
18 energy laboratories owned or operated by the De-
19 partment of Energy that is issued to implement the
20 Commission’s responsibilities under the Act which
21 enacted this paragraph, and any final determination
22 of the Commission relating to whether a nonmilitary
23 energy laboratory owned or operated by the Depart-
24 ment is in compliance with such standards and all
25 applicable Commission regulations or orders.”.

1 (7) EMPLOYEE PROTECTION.—Any Department
2 contractor operating a nonmilitary energy laboratory
3 that is regulated by the Nuclear Regulatory Com-
4 mission under this section shall be subject to section
5 211 of the Energy Reorganization Act of 1974 (42
6 U.S.C. 5851) to the same extent as any other em-
7 ployer subject to such section 211.

8 (8) CONFLICT OF INTEREST.—Section 170A of
9 the Atomic Energy Act of 1954 (42 U.S.C. 2210a)
10 applies to contracts, agreements, or other arrange-
11 ments of the Nuclear Regulatory Commission pro-
12 posed or entered into pursuant to its responsibilities
13 assumed under this subsection.

14 (c) OCCUPATIONAL SAFETY AND HEALTH.—

15 (1) OSHA JURISDICTION.—Notwithstanding
16 section 4(b)(1) of the Occupational Safety and
17 Health Act of 1970 (29 U.S.C. 653(b)(1)), effective
18 2 years after the date of enactment of this Act, the
19 Occupational Safety and Health Administration shall
20 assume the exclusive regulatory and enforcement re-
21 sponsibilities of the Department relating to matters
22 covered by the Occupational Safety and Health Act
23 of 1970 with regard to all nonmilitary energy lab-
24 oratories owned or operated by the Department, ex-
25 cept as provided in paragraph (2). The responsibil-

ities assumed by the Occupational Safety and Health Administration under this subsection shall be administered by the Occupational Safety and Health Administration, not by States. Any Department contractor operating such a laboratory shall, with respect to matters relating to occupational safety and health, be considered to be an employer for purposes of the Occupational Safety and Health Act of 1970.

(2) REGULATION OF HAZARDS CONTAINING RADIOLOGICAL AND NON-RADIOLOGICAL COMPONENT.—If a hazard at a nonmilitary energy laboratory owned or operated by the Department presents a risk of occupational exposure and contains both a radiological and non-radiological component, the Occupational Safety and Health Administration and the Nuclear Regulatory Commission shall, effective 2 years after the date of enactment of this Act, share regulatory and enforcement responsibilities with respect to the hazard in accordance with the memorandum of understanding entered into pursuant to subsection (d).

(d) MEMORANDUM OF UNDERSTANDING.—The Nuclear Regulatory Commission and the Occupational Safety and Health Administration shall, not later than 1 year after the date of enactment of this Act, enter into and

1 transmit to the Congress a memorandum of under-
2 standing to govern the exercise of their respective authori-
3 ties over nuclear safety and occupational safety and health
4 at nonmilitary energy laboratories owned or operated by
5 the Department.

6 (e) CIVIL PENALTIES.—The Department’s contractor
7 operating a nonmilitary energy laboratory owned or oper-
8 ated by the Department shall not be liable for civil pen-
9 alties under the Atomic Energy Act of 1954 or the Occu-
10 pational Safety and Health Act of 1970 for any actions
11 taken before the date of transfer of regulatory authority
12 under this section, pursuant to the instructions of a Fed-
13 eral agency in preparation for the transfer of regulatory
14 and enforcement responsibilities required by this section.

15 (f) INDEMNIFICATION.—The Secretary shall continue
16 to indemnify nonmilitary energy laboratories owned or op-
17 erated by the Department in accordance with the provi-
18 sions of section 170 d. of the Atomic Energy Act of 1954.

19 (g) DEPARTMENT REPORTING REQUIREMENT.—Not
20 later than 18 months after the date of enactment of this
21 Act, the Secretary shall transmit to the Congress a plan
22 for the termination of the Department’s regulatory and
23 enforcement responsibilities for nonmilitary energy labora-
24 tories owned or operated by the Department required by
25 this section. The report shall include—

1 (1) a detailed transition plan, drafted in coordi-
2 nation with the Nuclear Regulatory Commission and
3 the Occupational Safety and Health Administration,
4 giving the schedule for termination of self-regulation
5 authority as outlined in subsection (a), including the
6 activities to be coordinated with the Nuclear Regu-
7 latory Commission and the Occupational Safety and
8 Health Administration;

9 (2) a description of any issues remaining to be
10 resolved with the Nuclear Regulatory Commission,
11 the Occupational Safety and Health Administration,
12 or other external regulators, and a timetable for re-
13 solving such issues by the authority transfer date es-
14 tablished under this section; and

15 (3) an estimate of—

16 (A) the annual cost of administering and
17 implementing self-regulation of the nuclear
18 safety and occupational safety and health re-
19 sponsibilities described in subsections (b) and
20 (c) at nonmilitary energy laboratories owned or
21 operated by the Department;

22 (B) the number of Federal and contractor
23 employees administering and implementing such
24 self-regulation; and

1 (C) the extent and schedule by which the
2 Department and the staffs at its nonmilitary
3 energy laboratories will be reduced as a result
4 of implementation of this section.

5 (h) GENERAL ACCOUNTING OFFICE REPORTING RE-
6 QUIREMENT.—The Comptroller General of the United
7 States shall periodically report to the Congress on the
8 progress made in implementing this section. The Comp-
9 troller General shall provide a report not later than 20
10 months after the date of enactment of this Act on the De-
11 partment’s transition plan, and not later than 26 months
12 after the date of enactment of this Act on the implementa-
13 tion of Nuclear Regulatory Commission and Occupational
14 Safety and Health Administration regulations in the non-
15 military energy laboratories.

16 (i) DEFINITIONS.—For purposes of this section—

17 (1) the term “Department” means the Depart-
18 ment of Energy;

19 (2) the term “nonmilitary energy laboratory”
20 means—

21 (A) Ames Laboratory;

22 (B) Argonne National Laboratory;

23 (C) Brookhaven National Laboratory;

24 (D) Fermi National Accelerator Labora-
25 tory;

1 (E) Lawrence Berkeley National Labora-
2 tory;
3 (F) Oak Ridge National Laboratory;
4 (G) Pacific Northwest National Labora-
5 tory;
6 (H) Princeton Plasma Physics Laboratory;
7 (I) Stanford Linear Accelerator Center; or
8 (J) Thomas Jefferson National Accelerator
9 Facility; and
10 (3) the term “Secretary” means the Secretary
11 of Energy.

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